



Mutual Non-Disclosure Agreement

This Mutual Non-Disclosure Agreement (this "Agreement"), entered into on _____ (the "Effective Date"), is made by and between Enel X Way USA, LLC ("Enel X"), and the participant named below. For the purpose of evaluating and negotiating a possible affiliation between them (the "Purpose"), each party (in such capacity, the "Disclosing Party") anticipates disclosing or granting access to Confidential Information (as defined below) to the other party (in such capacity, the "Receiving Party") on the terms and conditions set forth in this Agreement. As an essential condition to disclosing or providing access to any such information, the parties agree as follows:

- 1. Confidential Information.** "Confidential Information" means any written, audible, visual or oral information or physical items of the Disclosing Party relating to such party's and its affiliates' business, operations, strategy, customers and potential customers, products or technology which (i) in the case of information disclosed in writing, is labeled as confidential, proprietary or the like, (ii) in the case of information disclosed orally, is identified as confidential or proprietary at the time of disclosure, or (iii) would reasonably be understood to be confidential based on the nature of the information or the circumstances of disclosure.
- 2. Exceptions.** "Confidential Information" does not include information that the Receiving Party can sufficiently show (i) is publicly known at the time of its disclosure hereunder or becomes publicly known through no fault of the Receiving Party, (ii) is lawfully received by the Receiving Party from a third party who is not breaching any confidentiality obligations owed to the Disclosing Party, (iii) is independently developed by the Receiving Party without use of or reliance on any Confidential Information, or (iv) is required to be disclosed under applicable law or regulation or a court order, provided that the Receiving Party gives the Disclosing Party prompt written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate legal or equitable remedy to prevent or minimize such disclosure.
- 3. Non-Use and Non-Disclosure.** The Receiving Party shall not disclose, copy, or use any Confidential Information, other than for the Purpose, without the prior written consent of the Disclosing Party and then only to the extent specified in such consent. Confidential Information may be disclosed by the Receiving Party in connection with the Purpose only on a need-to-know basis to such party's employees, independent contractors, affiliates, and other agents (collectively, "Representatives") who are subject to confidentiality obligations; provided that the Receiving Party will be principally liable for any breach of this Agreement by its Representatives. The Receiving Party may not modify, adapt, reverse engineer or recreate any hardware, software or documentation provided by the Disclosing Party.
- 4. No License or Warranties.** The Receiving Party agrees that it will not receive any right, title or interest in, or any license or right to use (except as permitted herein), the Confidential Information or any patent, copyright, trade secret, trademark or other intellectual property rights therein, by implication or otherwise. The Disclosing Party makes no warranties or representations, express or implied, concerning its Confidential Information.
- 5. Irreparable Harm.** The Receiving Party acknowledges that a violation of this Agreement would cause irreparable harm to the Disclosing Party for which no adequate remedy at law exists. Therefore, in addition to any other remedies available, the Disclosing Party may seek injunctive relief to enforce the terms of this Agreement.
- 6. Return of Information.** Upon the Disclosing Party's written request, the Receiving Party shall promptly return or destroy all Confidential Information and all physical media on which Confidential Information was received, [subject to any applicable data retention requirements under state or local laws](#).
- 7. Term and Termination.** This Agreement will commence on the Effective Date and continue for a period of three (3) years thereafter. Either party may terminate this agreement for any reason upon thirty (30) days prior written notice to the other party. The parties' non-use and non-disclosure obligations will survive the expiration or termination of this Agreement and continue for a period of three (3) years following the date the Confidential Information in question was disclosed.
- 8. Ethics and Anticorruption.** Enel X declares that in managing its business activities and its relationships, it adheres to the principles contained in its Code of Ethics, the Zero Tolerance of Corruption Plan and the Organisation & Management Model adopted pursuant to Italian Legislative Decree 231/2001 (available at <https://www.enel.com/investors/a/2016/08/code-of-ethics>). Moreover, as a subsidiary of Enel S.p.A., Enel X declares its adherence to the United Nations Global Compact. Enel X wishes its counterparties to refer to the same principles in managing their business activities and relationships. Enel X prohibits any promises, offers, or requests of illegal payments, in cash or other benefits, with the objective of gaining an advantage in its relationships with stakeholders, and this prohibition is extended to all of its employees.
- 9. Privacy Laws.** The parties shall comply at all times with the requirements of applicable data privacy laws.
- 10. General.** This Agreement is binding on both parties and their respective successors and permitted assigns ~~and will be governed by and construed and enforced in accordance with the laws of the State of California, without giving effect to choice of law rules~~. Neither party may assign its rights or delegate its duties or obligations under this Agreement without the other party's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. In the event that any provision of this Agreement is held to be invalid, illegal or otherwise unenforceable, the validity, legality and

enforceability of the remaining provisions will in no way be affected or impaired thereby. This Agreement supersedes all other prior agreements, oral or written, and all other communications between the parties relating to the subject matter contained herein.

Enel X Way USA, LLC
360 Industrial Rd
San Carlos, CA 94070

Participant: _____
Address: _____

Signed: _____

Signed: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____